

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID Q. WEBB,

Petitioner,

v.

JOHN GESE,

Respondent.

Case No. 3:25-cv-05144-TL-TLF

ORDER TO SHOW CAUSE

The District Court has referred this action to United States Magistrate Judge Theresa L. Fricke. On February 20, 2025, petitioner David Q. Webb, a pre-trial detainee housed at Kitsap County Jail, filed a proposed federal habeas petition under 28 U.S.C. § 2241. Dkt. 1. Petitioner paid the filing fee on March 18, 2025, and on April 16, 2025, petitioner filed a supplement to the proposed petition. See Dkt. 6. The Court has reviewed the proposed petition and the supplement to the proposed petition and petitioner's claims appear to be unexhausted. And it appears it would be inappropriate for the Court to intervene in this case. The Court thus directs petitioner to file a response to this order and an amended pleading on the form provided by the Court by **June 16, 2025.**

BACKGROUND

In the proposed petition, petitioner contends his Fifth, Sixth, Eighth, and Fourteenth Amendment rights and his rights under the Bail Reform Act of 1984 have

1 been violated related to his pending state criminal proceedings. Dkt. 4 at 1. He asserts
2 the proceedings against him have been “fundamentally unfair” and asserts a
3 generalized conspiracy on the part of the Kitsap County Prosecutor’s Office and the
4 Kitsap County Sheriff’s Office — in obstructing discovery and forcing him to give up the
5 right of self-representation and the Constitutional right to a speedy trial. *Id.* at 1-4.
6 Petitioner also states that in an earlier case filed in this Court, Kitsap County Jail staff
7 interfered with his access to the Courts. *Id.* Petitioner asserts a domestic violence
8 restraining order was put in place without his ability to participate and his public
9 defender was ordered by the Court to acknowledge petitioner was guilty of domestic
10 violence. *Id.* Petitioner asserts the Court has denied his right to self-representation by
11 appointing counsel despite his seeking to represent himself. *Id.*

12 Petitioner states the judge set “the bail bond premium at \$500,000.00” and
13 subsequently, on November 18, 2024, increased it to \$1,000,000.00 based on a false
14 assertion from the Kitsap County prosecutor’s office regarding petitioner’s criminal
15 history. *Id.* He alleges this violates the Eighth and Fourteenth Amendments, the
16 Washington State Constitution, and the Bail Reform Act of 1984. *Id.* Petitioner alleges
17 the Kitsap County prosecutor’s office’s incorrect assertion regarding his criminal history
18 was corrected by defense counsel on December 19, 2024, though he does not address
19 whether his bail was subsequently reduced. *Id.* at 4-6.

20 Petitioner asserts on December 6, 2024, he met with appointed counsel who
21 advised that because of his legal schedule he intended to request to waive petitioner’s
22 “speedy trial” right, for the purpose of gaining sufficient time to provide an adequate
23 defense. *Id.* at 4-7. Petitioner again requested to represent himself because he did not
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1 wish to waive his speedy trial rights. *Id.* at 5. Petitioner asserts on either December 11
2 or 19, 2024, he appeared in Court and the Judge granted the “waiver of right to counsel
3 and order granting motion to proceed pro se.” *Id.* at 4-8. Petitioner asserts his former
4 attorney failed to turn over the discovery he had received to petitioner on that date. *Id.*

5 Petitioner asserts on December 13, 2024, the private investigator assigned to his
6 case by the public defender’s office certified he had received the discovery to date in
7 petitioner’s case. *Id.* at 8. Petitioner asserts on December 17, 2024, the private
8 investigator came to the jail to meet with petitioner. *Id.*

9 Petitioner asserts the private investigator had only been allotted 10 hours to work
10 on petitioner’s case which petitioner asserted violated his rights under *Ake v.*
11 *Okloahoma*, 470 U.S. 68 (1985) by failing to assure he had a fair opportunity to present
12 a defense. *Id.* Petitioner states the private investigator told him he would need to pick up
13 a thumb drive from the prosecutor’s office that would contain all of the discovery to date.
14 *Id.* Petitioner asserts he did not hear from private investigator again until January 10,
15 2025, at which point the private investigator had failed to accomplish any of the tasks
16 petitioner had assigned to him. *Id.* at 9.

17 Petitioner asserts on December 20, 2024, he appeared before the Court to
18 address pretrial issues including appointing standby counsel and addressing
19 “obstruction of ‘due process’ with discovery being denied” to petitioner. *Id.* at 6.
20 Petitioner also asserts on November 18, 2024, he was served with a 40-page amended
21 information. *Id.*

22 Petitioner asserts on December 21, 2024, he reviewed discovery for the first time
23 and did so until December 23, 2024, when he alleges the Kitsap County Sherriff’s Office
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1 began obstructing the proper review of discovery, preventing petitioner from responding
2 within five days as required. *Id.* at 9.

3 Petitioner asserts on each Friday beginning December 20, 2024, through
4 January 10, 2025, he appeared before the trial judge. *Id.* Petitioner asserts on
5 December 20, 2024, the Chief Public Defender told the Court he would not permit his
6 staff to be appointed as “stand-by-counsel.” *Id.* at 9-10. Petitioner asserts another
7 attorney appeared to see if he could act as stand by counsel but ultimately indicated he
8 would not be able to due to other commitments. *Id.*

9 Petitioner asserts on December 27, 2024, Lt. Ken Hall testified for the Kitsap
10 County Sheriff’s Office that petitioner could not use the tablet containing the “law library”
11 because it was a security risk. *Id.* Petitioner asserts this is a lie because the tablet has
12 no internet connection. *Id.* Petitioner asserts Lt. Hall also lied in stating that there was
13 inadequate lighting in defendant’s cell after light’s out. *Id.* Petitioner asserts that when
14 the prosecution handed petitioner eight pleadings that needed to be responded to in five
15 days, Lt. Hall instructed a correctional officer to not allow petitioner to have the
16 pleadings and that they would be kept with discovery at the entry of petitioner’s cell
17 block. *Id.* Petitioner asserts Lt. Hall drafted an email to all correctional officers that
18 petitioner should not be allowed to take the pleadings into the cellblock “to be
19 responded to properly with the tablet for the “law library.” *Id.*

20 Petitioner states on January 3, 2025, he refused to waive his speedy trial rights.
21 *Id.* He states the prosecutor told the Court he had received an email from a material
22 witness who would not be available until January 6, 2025. *Id.* at 10-11. Petitioner
23 asserts that, despite his protests, the Court continued the trial to February 10, 2025. *Id.*

1 Petitioner asserts it was strongly suggested he allow the Court to reappoint his
2 previous attorney as counsel. *Id.* Petitioner indicates on January 10, 2025, he was
3 “reluctantly forced” to give up his pro se status. *Id.*

4 Petitioner requests the Court dismiss the criminal charges pending against him
5 with prejudice. *Id.* at 12.

6 Petitioner has also submitted a “supplement” to his petition. Dkt. 6. In his
7 supplement petitioner appears to raise several challenges to his conditions of
8 confinement at Kitsap County Jail. *Id.* Specifically, petitioner alleges verbal harassment
9 by one of the corrections officers, challenges his security classification, and alleges the
10 jail policies regarding discovery and limitations on tablet “law library” access have
11 interfered with his access to the Courts and his ability to represent himself in his criminal
12 action because he is only permitted access to hard copies of discovery materials and
13 not electronic access. *Id.*

14 Petitioner also objects to an order issued by the Court in his criminal trial for the
15 collection of his DNA which he alleges violates state law. *Id.* at 9.

16 Petitioner further alleges his private investigator has contributed to the
17 conspiracy to obstruct him from preparing an adequate defense by failing to obtain
18 certain surveillance videos, public records, and cell phone data. *Id.* at 10-13.

19 DISCUSSION

20 **A. Exhaustion**

21 “[A] state prisoner must normally exhaust available state judicial remedies before
22 a federal court will entertain his petition for habeas corpus.” *Picard v. Connor*, 404 U.S.
23 270, 275 (1971). Petitioner’s claims will be considered exhausted only after “the state
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1 courts [have been afforded] a meaningful opportunity to consider allegations of legal
2 error without interference from the federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254,
3 257 (1986). “[S]tate prisoners must give the state courts one full opportunity to resolve
4 any constitutional issues by invoking one complete round of the State’s established
5 appellate review.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).

6 Although there is no exhaustion requirement mandated by 28 U.S.C. §
7 2241(c)(3), the Ninth Circuit has held exhaustion is necessary as a matter of comity
8 unless special circumstances warrant federal intervention before a state criminal trial.
9 *Carden v. Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980); see *Younger v. Harris*, 401 U.S.
10 37 (1971). “ ‘Only in cases of proven harassment or prosecutions undertaken by state
11 officials in bad faith without hope of obtaining a valid conviction and perhaps in other
12 extraordinary circumstances where irreparable injury can be shown is federal injunctive
13 relief against pending state prosecutions appropriate.’ ” *Carden v. State of Mont.*, 626
14 F.2d 82, 84 (9th Cir. 1980) (quoting *Perez v. Ledesma*, 401 U.S. 82, 85 (1971).

15 Petitioner fails to show he has exhausted state court remedies by presenting
16 federal constitutional or statutory claims to the Washington state trial and appellate
17 courts in the ongoing criminal proceedings against him. Petitioner has also not shown
18 special circumstances warrant federal intervention in this case.

19 Petitioner makes the conclusory assertion that there are “no other legal remedies
20 available” but fails to explain or provide any factual support for this assertion. Petitioner
21 also makes conclusory and speculative allegations of conspiracy by the prosecution, the
22 Kitsap County Sheriff’s Office, and the public defender’s office, including the private
23 investigator assigned to his case. But these conclusory and speculative assertions
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1 regarding conspiracy are not plausibly alleged or adequately supported by facts.

2 Therefore, petitioner must show cause why this case should not be dismissed for failure
3 to exhaust state remedies.

4 **B. Younger Abstention**

5 It appears many of petitioner's claims should be dismissed from federal court
6 under the *Younger* abstention doctrine. Under *Younger*, abstention from interference
7 with pending state judicial proceedings is appropriate when: "(1) there is 'an ongoing
8 state judicial proceeding'; (2) the proceeding 'implicate[s] important state interests'; (3)
9 there is 'an adequate opportunity in the state proceedings to raise constitutional
10 challenges'; and (4) the requested relief 'seek[s] to enjoin' or has 'the practical effect of
11 enjoining' the ongoing state judicial proceeding." *Arevalo v. Hennessy*, 882 F.3d 763,
12 765 (9th Cir. 2018) (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754
13 F.3d 754, 758 (9th Cir. 2014)). Federal courts do not invoke the *Younger* abstention if
14 there is a "showing of bad faith, harassment, or some other extraordinary circumstance
15 that would make abstention inappropriate." *Middlesex County Ethics Comm'n v. Garden
16 State Bar Ass'n*, 457 U.S. 423, 435 (1982).

17 Petitioner alleges his bail is excessive in violation of the Eighth Amendment,
18 which may not require the federal court to abstain from hearing this case. *See Arevalo*,
19 882 F.3d at 766 (finding *Younger* abstention is not appropriate where the issues raised
20 challenged a bail hearing). Yet many of petitioner's claims appear to implicate *Younger*.
21 First, petitioner is a pretrial detainee with ongoing state proceedings. Dkt. 4. Second,
22 because these proceedings involve a criminal prosecution, they implicate important
23 state interests. *See Kelly v. Robinson*, 479 U.S. 36, 49, (1986); *Younger*, 401 U.S. at
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43-44. Third, petitioner has failed to allege facts showing he has been denied an adequate opportunity to address the alleged constitutional violations in the state court proceedings. Last, petitioner raises some claims that would effectively enjoin the ongoing state judicial proceeding. For example, petitioner alleges interference with his Sixth Amendment right to self-representation and conspiracy to violate his right to a speedy trial, which could implicate *Younger*. See *Brown v. Ahern*, 676 F.3d 899, 903 (9th Cir. 2012) (“the rule of this circuit is that abstention principles generally require a federal district court to abstain from exercising jurisdiction over a habeas petition in which the petitioner raises a claim under the Speedy Trial Clause as an affirmative defense to state prosecution.”).

As the *Younger* abstention may apply to several of petitioner’s claims, petitioner must also show cause why these claims should not be dismissed under *Younger*.

C. Conditions of Confinement

Petitioner also raises several challenges the conditions of his confinement, rather than the legal authority for confinement itself. If he is attempting to challenge the conditions of his confinement, petitioner has the option of filing a civil rights action under 42 U.S.C. § 1983; it is unclear whether he can assert these claims in a habeas corpus petition. See *Ziglar v. Abbasi*, 582 U.S. 120, 144-145 (2017); *Pinson v. Carvajal*, 69 F.4th 1059, 1072-1075 (9th Cir. 2023) (the Supreme Court has left open the question of whether there may be circumstances when allegations about conditions of confinement could properly be brought in a habeas corpus action).

CONCLUSION

1 If petitioner intends to pursue this § 2241 habeas action, he must file a response
2 to this order and an amended petition on the form provided by the Court. The amended
3 petition must be legibly rewritten or retyped in its entirety, it should be an original and
4 not a copy, it should contain the same case number, and it may not incorporate any part
5 of the original complaint by reference. The amended petition will act as a complete
6 substitute for the petition and the supplement to the petition, and not as a supplement to
7 those filings.

8 If petitioner fails to adequately address the issues raised herein or file a response
9 and an amended pleading on or before **June 16, 2025**, the undersigned will recommend
10 dismissal of all, or part, of this action. If petitioner files a response and amended petition
11 but fails to address the issues raised herein the Court will recommend dismissal of all or
12 part of the action as unexhausted and/or based upon *Younger* abstention. If petitioner
13 fails to respond to the order the Court will recommend dismissal of the action for failure
14 to prosecute and failure to respond to a Court order and may also recommend dismissal
15 of the action as unexhausted and/or based upon *Younger* abstention. See Fed. R. Civ.
16 P. 41 (b).

17 The Clerk is directed to provide petitioner with the forms for filing a petition for
18 habeas corpus relief under 28 U.S.C. § 2241 and forms for filing a civil rights complaint
19 under 42 U.S.C. § 1983.

20 Dated this 16th day of May, 2025.

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23 Theresa L. Fricke
24 United States Magistrate Judge
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